THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.23923 of 2005

27.12.2005

Between:

G. Chandraiah, S/o.Veeraswamy

And others

… Petitioners

AND

The District Collector, Nellore

And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.23923 of 2005

ORDER:

The petitioners 1 to 6 are residents of Chillamuru village and petitioners 7 to 13 are residents of Ramapuram village in Chittamuru Mandal in Nellore District. They claim that they are landless and poor persons eking out a living as agricultural labourers. They allegedly occupied land in survey No.1 of Chillamuru village, developed the land and brought it to cultivation. This happened about two years ago. They are allegedly in possession of land admeasuring Acs.1.50 to Acs.4.00 each. They allegedly dug seven bore wells in the land for irrigation. The land occupied by them is a government land and therefore, they filed applications in 2003 before the third respondent requesting assignment of the land in their favour. These applications are allegedly pending before the third respondent. It is the case of the petitioners that the third respondent issued notices under Section 7 of A.P. Land Encroachment Act, 1905 (the Act, for brevity) calling upon the petitioners to show cause as to why they should not be evicted from the government land. These notices were served during the last week of March 2005. All of them submitted explanations on 28.3.2005 or 30.3.2005 justifying the occupation of the government land and denying that it is a forest poramboke land. When the third respondent objected the petitioners for raising watermelon crop, the petitioners brought to the notice regarding notices issued under Section 7 of the Act and explanations submitted by them and accordingly third respondent dropped the proceedings. The third respondent, however, did not issue pattas and therefore, they filed the present writ petition seeking a writ of Mandamus declaring the action of the third respondent in not granting assignment pattas to the petitioners in respect of the land allegedly in their possession as illegal and arbitrary and contrary to the provisions of Board Standing Order (BSO) 15. They also seek a consequential direction to the third respondent.

The learned Counsel for the petitioners vehemently contended that the land in occupation of the petitioners is a government land and it is not a forest poramboke land. According to the learned Counsel, if the land in question is a forest poramboke land, the Mandal Revenue Officer is not competent to issue notice under Section 7 of the Act. He nextly contends that after issue of the notices, the third respondent did

not pass final order under Section 6 of the Act and therefore, the proceedings are deemed to have been dropped. He relies on BSO 15 to contend that when a person is in occupation of government land and if such occupation is not objectionable, the Mandal Revenue Officer is bound to consider the assignment of the land to the occupant.

The learned Assistant Government Pleader for Revenue (General) obtained instructions from respondents 1 to 3 and opposed the writ petition. He submits that the land in occupation of the petitioners is a forest land and therefore, notices were issued under Section 7 of the Act for evicting them. After considering the explanations submitted by the petitioners, the third respondent passed orders on 04.4.2005 under Section 6 of the Act directing the petitioners to remove the encroachments and vacate the land, and these notices were served in accordance with law on 05.4.2005 or 06.4.2005. He submits that as the petitioners were not available in the village, the notices were affixed on a poll near the land. Lastly, he would urge that the petitioners have an effective alternative remedy of filing appeal under Section 7 of the Act and therefore, the writ petition is not maintainable. The learned Assistant Government Pleader has produced the copies of the orders passed by the third respondent under Section 6 of the Act, which have been perused by the learned Counsel for the petitioners as well.

If the land allegedly under the occupation of the petitioners in survey No.1 is classified as forest poramboke land or reserve forest land, the petitioners' occupation would be illegal being objectionable. If the petitioners are evicted from the land, which is allegedly in their occupation till their eviction, and if the petitioners are eligible being landless and poor, their cases can be considered by the third respondent, but the petitioners cannot insist upon assignment of land in survey No.1. The submission of the learned Assistant Government Pleader that the petitioners were already evicted from the land and possession is taken under a cover of panchanama is recorded. Be that as it is, the third respondent has already passed orders under Section 6 of the Act ordering eviction of the petitioners and there is no reason to disbelieve this fact of the matter.

Whether the third respondent is competent to evict an encroacher from the forest land is a question, which has to be decided having regard to the provisions of BSO 15 as well as A.P. Forest Act, 1967. At the first instance, this can as well be looked into by jurisdictional RDO, who is constituted as an appellate authority under Section 10 of the Act. Therefore, the petitioners may approach the MRO and obtain copies of the orders under Section 6 of the Act and file appeal before the second respondent. The petitioners are given liberty to approach the third respondent on 09.1.2006 for obtaining the copies of the orders dated 04.4.2005 passed under Section 6 of the Act. After doing so, they are given liberty to file appeal before the second respondent within a period of one week thereafter and the second respondent is directed to entertain appeal and pass appropriate orders within a period of four weeks after filing of the appeal.

The writ petition, with the above observations and directions, is accordingly disposed of. No costs.

December 27, 2005. (**V.V.S. RAO,J**)

NOTE:

Dispatch order copy today.

(B/o)

YS